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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-eighth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 26th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 23 August 1996, at 10 a.m.

Chairman: Mr. EIDE

THE ADMINISTRATION OF JUSTICE AND HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(b) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(c) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS (continued)

* The summary record of the first part (closed) of the meeting appears as document E/CN.4/Sub.2/1996/SR.26.

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The public meeting was called to order at 12.05 p.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

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(c) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

(agenda item 10) (continued) (E/CN.4/Sub.2/1996/16, 17, 18 and 19; E/CN.4/Sub.2/1996/NGO/2, 4, 5, 11 and 17; E/CN.4/Sub.2/1996/26; E/CN.4/Sub.2/1996/NGO/30 and 31)

1. Mrs. PARES (Pax Romana) began by drawing the Sub-Commission's attention to the joint written statement in which a significant number of NGOs expressed their concern about the alarming situation in Chechnya, and particularly in Grozny.

2. Regarding the situation in Guatemala, she welcomed the Government's recent decision to demobilize civil action patrols. However, demobilization must not lead to impunity for those members who had allegedly been involved in criminal acts. Such a measure should also be strengthened by the abrogation of the decree creating the patrols. She also welcomed the measures adopted to compensate victims of the Xaman massacre, but nevertheless deplored the fact that the eight soldiers accused had been freed on bail while the final judgement was still pending. It was thus absolutely essential to follow up the democratization process in Guatemala and give effect to paragraph 3 of the decision taken in that regard by the Sub-Commission on 20 August 1966.

3. In the former Yugoslavia, political or military leaders such as Radovan Karadzic and Ratko Mladic were still pursuing their policy of ethnic hatred. The international community must support the work of the International War Tribunal for the former Yugoslavia by sending a clear message that war criminals would be held personally accountable for their acts, as stipulated in paragraph 9 of resolution 1995/8. At the same time, the European Union should, in accordance with the conclusions adopted by its General Affairs Council in October 1995, withdraw all non-humanitarian assistance to Croatia, the Federal Republic of Yugoslavia and the Bosnian Serbs if they did not agree to cooperate fully with the Tribunal.

4. Institutionalized impunity was another problem in a large number of countries, such as Peru where, in June 1995 a decree-law had been enacted granting amnesty to members of the military, police and civil service who had committed violations of human rights between 1980 and 1995. While welcoming the recent decision of the Peruvian Government to create a commission to review cases of individuals claiming to have been unfairly sentenced or detained for acts of terrorism, Pax Romana called for the repeal of the amnesty decree and related laws and the restoration of an adequate judicial

system in Peru. The gross violations of human rights which continued to occur in Peru were the consequence of the total impunity enjoyed by those responsible for such atrocities.

5. Mr. KANE (African Commission for the Promotion of Health and Human Rights - CAPSDH), referring to the question of human rights and states of emergency, drew the Sub-Commission's attention to the continued state of emergency in southern Mauritania, where the black population suffered constant intimidation at the hands of the national security forces who confiscated their property, subjected them to forced labour and hampered their freedom of movement. He also condemned the arbitrary trials of some individuals for political activities, most of which had ended with the accused receiving sentences out of all proportion with the act with which they were charged. Those sentences were often extended to other members of their families and, in some cases, to the whole village or national community to which the individual belonged. The Mauritanian judiciary was far from independent from the executive power, and the Arabization of the justice system led to descrimination against the vast majority of black Mauritanians. CAPSDH asked the Sub-Commission to help in establishing an independent and impartial judiciary in Mauritania, to devote greater attention to the phenomenon of impunity in that country and to safeguard its multicultural and multilingual character as an essential ingredient of peace and security in the subregion. He then gave the floor to another member of CAPSDH.

6. Mr. GRAVES (African Commission for the Promotion of Health and Human Rights - CAPSDH) said that despite the appeals made by various NGOs at the fifty-second session of the Commission on Human Rights, the human rights situation in Bahrain had continued to worsen since then. Extrajudicial executions had resumed and the riot police had killed peaceful demonstrators, such as Mr. Marhoon and the young Ali Taher, not to mention the premeditated murder of Mr. Salman Al-Taitoon and his family. Torture had also become a common practice in detention centres and had led to the death of a 12-year old boy while in custody. Women and young girls were increasingly the victims of State violence, as many men who were active members of the pro-democracy movement were in prison or in exile. The number of trials in which internationally recognized procedures were not observed had increased considerably, many of them being conducted by the State Security Court. CAPSDH therefore called on the Sub-Commission to help in setting up an independent inquiry into Bahrain's prisons, perhaps conducted by the International Committee of the Red Cross, and to urge the Bahrain authorities to agree to a visit by United Nations experts in order to assess the human rights situation in that country.

7. Mrs. AULA (Pax Christi International) said that, since the Serbian authorities had forcibly put an end to Kosovo's autonomy, the decisions of the courts served merely to endorse the most serious violations of human rights. Practically all Albanian judges had been dismissed, so that Albanians, who made up 90 per cent of Kosovo's population, were tried by Serbs. During the period of custody and often during the preliminary investigation as well, Albanians accused of political offences were prevented from consulting their lawyers and the courts imposed heavy sentences on them on the basis of confessions extracted by intimidation and under torture.

8. In Burma, the State Law and Order Restoration Council (SLORC) did not consider itself obligated to abide by the law. Moreover, under the state of emergency, it issued decrees which violated the fundamental freedoms of the population with complete impunity.

9. In Iran, 17 years after the Islamic revolution, the newly introduced penal code, based entirely on the Sharia, stipulated the death penalty, imprisonment and flagellation for various political and ordinary crimes. Pax Christi was greatly concerned by the confusion prevailing between the religious and judicial authorities which enabled the Islamic religion to be used for State ends.

10. Finally, he made an appeal on behalf of three defenders of human rights whose efforts had cost them their freedom. In Bangladesh, in the Chittagong hills, Kolpana Chakma, an active defender of the rights of the Jumma indigenous population, had been arrested at her home by security officials on 12 June 1996 and had not been heard of since. In Tunisia, Khemais Chammari, a human rights worker, had been sentenced without proof to five years' imprisonment in a trial in which the norms of international law had not been observed, although they had been acceded to by Tunisia. Finally, in Indonesia, Mrs. Sukarnoputri was in danger of being arrested.

11. Mr. TEITELBAUM (American Association of Jurists) said that, in annex II entitled "Set of principles for the protection and promotion of human rights through action to combat impunity", of his study on the question of impunity (E/CN.4/Sub.2/1996/18), Mr. Joinet referred to "serious" violations and "consistent patterns" of violations, suggesting that there could be violations which were not serious, which was a contradiction in terms. Moreover, the adjective "serious" was not to be found in any United Nations legal instrument on the question. In defining the scope of the above-mentioned principles, therefore, the expression "violation of fundamental rights" might if necessary be used. Moreover, the term "consistent pattern" which appeared in the Economic and Social Council resolutions 1503 (XLVIII) and 1235, referred not to the actual violation of a human right, which could not go unpunished, but to the general situation in a given country.

12. The "reference period" was defined as "the period of impunity delimited by fixed dates ... ". That was an unjustifiable limitation, as experience showed that human rights violations and impunity could exist at any time and in any circumstances in any country. Moreover, there seemed little point in introducing a reference period which could "not be interpreted as exonerating or having exonerated States from applying and observing these principles during the said period". Furthermore, except in the second paragraph of Principle 13, no reference was made to impunity regarding violations committed by a State or its agents outside its frontiers (aggression, terrorist attacks, coups d'état, colonial or neocolonial wars), including those committed in the context of operations authorized by the Security Council.

13. For further details, he referred members of the Sub-Commission to document E/CN.4/Sub.2/1996/NGO/2 and invited them to amend the principles to give them a more truly universal character.

14. Mr. OZDEN (Centre Europe - Tiers Monde) said that the Turkish Association for Human Rights (IHD) had recorded 231 disappearances of

detainees, 122 extrajudicial executions, 321 murders by unknown assailants, 57 deaths in detention as a result of torture and 1,412 allegations of torture for the year 1995. The systematic practice of torture in Turkish prisons was mainly a result of the impunity enjoyed by most of the torturers, the length of the period of custody (incommunicado) and the difficulty in having the results of torture certified by a doctor.

15. Recently, in protest against their conditions of detention, more than 300 prisoners had staged a hunger strike, and 12 of them had died. The authorities had finally agreed to their demands for an end to torture, an end to repressive measures against the families of prisoners and observance of the rights to a defence and access to medical care. Unfortunately, according to information received, the Turkish authorities did not appear to be honouring their pledges. For example, the hunger strikers held in the Cankiri, Canakkale, Konya and Yozgat prisons were reportedly receiving no medical care and hunger strikes had resumed in Amasya, Elazig, Erzurum and Nazilli prisons. In addition, the Turkish authorities had waged a slanderous campaign against the striking prisoners, accusing them of among other things, eating in secret and transforming prisons into terrorist training centres. It would also be noted that the undertakings given by the authorities as part of the agreement reached with prisoners in Ümraniye prison in January 1996 had thus far not been honoured.

16. In conclusion, he urged the Turkish Government to invite the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on torture and the Working Group on Enforced or Involuntary Disappearances of the Commission on Human Rights to visit Turkey.

17. Mr. LOYDEN (Afro-Asian Peoples' Solidarity Organization) said the human rights situation in Pakistan was deeply disturbing. Recently, 23 members of Parliament, including himself, had protested against the violations of human rights committed in Pakistan, of which the Mohajirs were the main victims. Discrimination against that community, particularly with regard to employment and education, could be traced back to the colonial period and the application of the "divide and rule" principle. Unfortunately, since independence, which had been achieved at great sacrifice, Pakistan had been dominated by an extremely backward, corrupt, cruel and greedy élite, with the support of military top brass and religious fundamentalists.

18. It was scarcely surprising, therefore, that the illiteracy rate was very high and living standards very low, not to mention the forced labour of large numbers of children. As for political rights, he recalled that Senator Ishtiaq Azhar and Mrs. Nasreen Jalil (MQM elected representative) had been detained for many months without trial.

19. In conclusion, he called on the Sub-Commission to give its attention to the discriminatory practices which had already led Pakistan to disaster and division.

20. Mr. JOINET (Chairman-Rapporteur of the sessional working group on the administration of justice and the question of compensation), introducing the working group's report (E/CN.4/Sub.2/1996/16), said that, at its last meeting, the working group had begun by considering the draft basic principles and guidelines on the right to reparation for victims of gross violations of human

rights and humanitarian law prepared by Mr. van Boven (E/CN.4/Sub.2/1996/17). The working group had decided to invite the Sub-Commission to transmit the draft, as revised in the light of comments made by members of the working group, to the Commission.

21. The working group had then considered the follow-up report on the evolution of capital punishment submitted at its request by Mr. Guissé. The report went further into the question of the application of the death penalty to the most vulnerable groups such as the handicapped, minors and pregnant women.

22. Item 3 of the working group's agenda concerned follow-up measures to the Declaration on the Protection of All Persons from Enforced Disappearance. In that connection, the working group had considered a preliminary draft "international convention on the prevention and punishment of enforced disappearances", prepared by Mr. Joinet, and had made a number of comments on the form and substance of the draft. As to the machinery for monitoring implementation of the convention, the working group envisaged three possibilities: wait and see whether such a mechanism was necessary in practice; provide for the establishment of such a body in the convention itself; or expand the mandate of the Working Group on Enforced or Involuntary Disappearances to enable it to monitor implementation of the convention. Before making a decision, the working group wished to hold consultations with, among others, the members of the Working Group on Enforced or Involuntary Disappearances.

23. Regarding habeas corpus as a non-derogable right, the working group had decided to continue consideration of that and equivalent procedures such as amparo.

24. The working group had decided to retain the question of juvenile justice provisionally on the agenda for its 1997 session and requested Mrs. Gwanmesia to prepare a working paper on the question. Finally, the working group had unfortunately not had time to consider the item entitled "Measures to be taken to give full effect to the Convention on the Prevention and Punishment of the Crime of Genocide". It had decided to include the question in the agenda for its 1997 session, in view of its paramount importance, as demonstrated by the tragedy of Rwanda, for example.

25. Mr. SANDOVAL (Observer for Colombia), speaking in exercise of the right of reply, informed the Sub-Commission that the Colombian Minister for Foreign Affairs and the High Commissioner for Human Rights had come to an agreement on the establishment of an office of the High Commissioner for Human Rights in Colombia. The Colombian Government hoped that the cooperation between the Colombian authorities and the office would help to promote human rights in Colombia. The office would be able to advise the executive, judicial and legislative branches of Government on human rights. It would also be authorized to receive individual complaints. The United Nations legal services would finalize the agreement. In the meantime, the Colombian Government would make every effort to ensure that the office was set up as quickly as possible.

26. Mr. BOROZNY (Observer for the Russian Federation), speaking in exercise of the right of reply regarding the Sub-Commission's, decision on the human rights situation in Chechnya, said that as a result of the efforts of the Russian Federation authorities, and in particular of General Lebed, a cease-fire agreement had just been signed for the whole of Chechnya.

27. While his delegation understood the international community's concern about the situation in Chechnya, it was surprised that those who had initiated the decision in question had remained silent when, two weeks earlier, the Chechen rebels had violated the preceding cease-fire by attacking the city of Grozny. His delegation also deplored the fact that the decision in question had been taken hastily on the basis of incomplete and unverified information and contrary to the Sub-Commission's rules of procedure.

28. Mrs. WARZAZI said that, while respecting the views of national observers, she wished to point out that they were not authorized to express themselves on the way in which the Sub-Commission applied its rules of procedure.

The meeting rose at 1.10 p.m.